THE HON'BLE MR. JUSTICE V.V.S. RAO

THURSDAY, THE 15TH DAY OF DECEMBER, 2005

W.P.No. 26541 of 2005

Between:-

Gurrala Sarojini Devi and another.

--Petitioners

And

The Commissioner Appeals, O/o. The Chief Commissioner of Land Administration, Andhra Pradesh, Nampally, Hyderabad and three others.

--Respondents

THE HON'BLE MR. JUSTICE V.V.S. RAO

W.P.No. 26541 of 2005

O R D E R:

The petitioners are daughters of one late Narsingu Narsimha Rao. He was allegedly owner and possessor of land ad-measuring 12-70 hectares of Ankannagudem village of Venkatapuram mandal, Khammam district. He died in 1972. The petitioners, their another sister and mother survived late Narsingu Narsimha Rao. They allegedly partitioned the property under a 'partition list' dated 22-10-1972, as there were no male survivors in the family.

The land in Ankannagudem village is regulated by the Andhra Pradesh Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969 (hereinafter called 'the Regulations'), which requires every person in possession of the land/Mahals to obtain a Ryotwari patta from the Settlement Officer i.e., Revenue Divisional Officer concerned. It appears a *suo motu* inquiry was initiated by the 3rd respondent-the Settlement Officer and the claim of the petitioners was disallowed by order dated 07-02-1979. In that, the petitioners allegedly failed to prove direct cultivation for continuously for a period of eight (8) years prior to coming into force the Regulations i.e., 26-12-1970. An appeal was filed before the 2nd respondent, who allowed the appeal, granting patta in respect of certain survey numbers and rejecting the claim in respect of other survey numbers. Aggrieved by the same, the third sister-Tavidishetty Vijayalaxmi, through her husband and mother of the petitioners, filed an appeal before the 2nd respondent. The same was allowed setting aside the patta granted in favour of the petitioners. The petitioners, therefore, approached before the 1st respondent by way of a further appeal. By the order dated 26-09-1987, the 1st respondent remanded the matter to the 2nd respondent for a *denovo* inquiry. Again the claim of the petitioners was dismissed on 07-03-2003 by the 2nd respondent on the ground that the petitioners did not substantiate their claim for Ryotwari patta under the Regulations. Again the petitioners invoked the jurisdiction of the 1st respondent under Section 9 of the Regulations. By the impugned proceedings dated 30-06-2005, the 1st respondent confirmed the orders of the 2nd respondent and

dismissed the appeal of the petitioners holding that the petitioners failed to adduce additional documentary evidence to show that they were in possession and cultivating the land for a period of eight (8) years prior to 26-12-1970 (notified date).

In this writ petition, learned counsel for the petitioners Mr. V. Jithender Rao, *inter alia*, contends that the impugned order suffers from mis-direction in law. According to the learned counsel, the 1st respondent rejected the appeal only on the ground that as directed by this court in a writ petition, the petitioners did not adduce any evidence of their possession and cultivation. Learned counsel also submits that a report was submitted by the then Tahasildar to the effect that the petitioners are in possession of the land, but the entire records were damaged in a fire accident in 1994 and that the petitioners are very much cultivating the land. This court also heard the learned Assistant Government Pleader for Revenue (General).

A copy of the order passed by this court on 28-11-2003 in W.P.No. 24923 of 2003 is placed before this court. The said writ petition was filed by the writ petitioners and their sister—Tavidisetti Vijayalakshmi, seeking a declaration that the action of the respondents No. 1 and 4 herein in proposing to assign the lands of the petitioners in favour of tribals is illegal and arbitrary. This court, having noticed that the petitioners' appeal before the 1st respondent is still pending, disposed of the writ petition giving liberty to the petitioners to move an application before the Commissioner of Appeals for appropriate orders. The court never adverted to the question of the petitioners producing evidence/additional evidence before the 1st respondent before whom by that time the appeal under Section 9 of the Regulations, was pending. However, while dismissing the appeal of the petitioners, the Commissioner for Appeals observed as under:

> …After the orders are passed by the Director of Settlements, the Appellants herein have moved the matter before the Hon'ble High Court and that the Hon'ble High Court had directed the Appellants herein to move an application before the Commissioner, Appeals to safeguard their rights and that the Commissioner shall consider the same and pass appropriate orders, if any such application was filed before him. In pursuance of the orders passed by the Hon'ble High Court, the Appellants herein have filed the present appeal. But the appellants have not filed any additional documentary evidence in support of their claim and to establish their rights for a period of 8 years prior to 26-12-1970 and that their possession is valid under L.T. Regulation 1/59 as amended by Regulation 1/70 as required under Section 5 (a) & (b) read with Section 8 of A.P. Mahals Regulation 1/69. In the absence of such additional documentary evidence, I see no reason to interfere with the orders passed by the Director of Settlements in A.P.No. 1/80 (G2) dt. 07-03-2003 and thus the Appeal is dismissed.

The above observations of the 1st respondent would clinchingly show that the 1st respondent misdirected himself in disposing of the appeal of the petitioners. When this court did not observe in the writ petition or give opportunity to the petitioners to adduce additional evidence, it was improper for the 1st respondent to dismiss the appeal only on the ground that they did not adduce additional evidence. For this

reason alone, the impugned order is unsustainable.

In the result, the writ petition is allowed. The impugned order of the 1st respondent dated 30-06-2005 is set aside and the matter is remanded back to the 1st respondent with a direction to dispose of the matter, on merits, within a period of eight (8) weeks from the date of receipt of a copy of this order, after considering various submissions to be made by the petitioners. There shall be no order as to costs.

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V.V.S. RAO, J

15-12-2005

Pvks/*

Nb:- Registry to furnish c.c. in one week.

B/o

Pvks/*